

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA

UNITED STATES OF AMERICA)
) E.D. TENN MAG. NO.: 1:14-mj-199
 v.) CHG DIST. No. 2:13-cr-20070-01
) WESTERN DIST OF TENN-MEMPHIS
MICHAEL J. TOPACIO) *LEE*

MEMORANDUM AND ORDER

The defendant appeared before the undersigned on July 16, 2014 for an initial appearance, and on July 23, 2014 for a preliminary examination and detention hearing in accordance with Rules 5 and 32.1 of the Federal Rules of Criminal Procedure on an arrest warrant and Petition for Warrant or Summons for Offender Under Supervision out of the U.S. District Court, Western District of Tennessee, Memphis Division. Those present for the hearing included:

- (1) AUSA Jay Woods for the USA.
- (2) The defendant, MICHAEL J. TOPACIO.
- (3) Attorney Myrlene Marsa with Federal Defender Services of Eastern Tennessee.

After being sworn in due form of law, the defendant was informed or reminded of his privilege against self-incrimination accorded him under the 5th Amendment to the United States Constitution. At the initial appearance on July 16, 2014, Attorney Marsa with Federal Defender Services of Eastern Tennessee, was appointed as defendant's counsel in the arresting district.

The defendant had been provided with a copy of the arrest warrant and petition and had the opportunity of reviewing those documents with his attorney. It was determined defendant was capable of being able to read and understand the documents.

On July 16, 2014, USA Wood moved that defendant be detained without bail. Defendant waived his right to an identity hearing, but requested a preliminary examination and detention hearing in the arresting district and requested time to prepare for such hearings. Said hearings were conducted on July 23, 2014.

Preliminary Examination and Detention Hearing Proof

AUSA Wood called U.S. Probation Officer Mike Stuart to testify to the factual allegations of non-compliance as stated in the petition, which is filed as Document 41, U.S. District Court, Western District of Tennessee, Memphis Division, Case 2:13-cr-20070-dkv. Attorney Marsa cross-examined Officer Stuart. Attorney Marsa called defendant's mother, Marlana Hedden, on behalf of defendant and made proffers of various evidence. Both parties presented their respective arguments, which were fully considered by the Court.

Findings

- (1) I find there is probable cause to believe defendant has committed a violation of some of his conditions of supervised release.
- (2) I find clear and convincing evidence defendant violated at least one condition of his bond and that he is unlikely to abide by conditions or combinations of conditions that can assure defendant's appearance or the safety of any other person and the community at this time. Defendant did not meet his burden of establishing by clear and convincing evidence that he will not flee or pose a danger to any other person or the community under Fed. R. Crim. P. 32.1(a)(6), and he must therefore be detained without bail.

It is ORDERED:

- (1) The defendant is held to answer the charges against him in the U.S. District Court, Western District of Tennessee, Memphis Division and shall appear for a revocation hearing in the charging district.
- (2) The government's motion that the defendant be DETAINED WITHOUT BAIL is GRANTED. Defendant shall be transferred to the U.S. District Court, Middle District of Tennessee, Memphis Division.
- (3) The U.S. Marshals Service shall transport the defendant to the U.S. District Court, Western District of Tennessee, Memphis Division for a revocation hearing and further proceedings on a date to be determined once the defendant is in said district.

ENTER.

s/ *Susan K. Lee*
SUSAN K. LEE
UNITED STATES MAGISTRATE JUDGE